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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

ETA Fabrique d'Ebauches, S.A.
v.
TCJC, Inc.

Opposition No. 104,498
to Application No. 74/655,295
filed on March 31, 1995

Jess M. Collen, Esq. for ETA Fabrique d'Ebauches, S.A.

Gregory J. Battersby and Joanne A. Romantello of Grimes & Batterby for TCJC, Inc.

Before Cissel, Walters and Chapman, Administrative Trademark Judges.

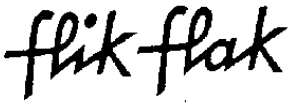
Opinion by Walters, Administrative Trademark Judge:

ETA Fabrique d'Ebauches, S.A. filed its opposition to the application of TCJC, Inc. to register the mark FLIP WATCH for "clocks, travel alarm clocks, wristwatches, pocket watches and pendant watches," in International Class 14.[1]

[1] Application Serial No. 74/655,295, filed March 31, 1995, based upon an allegation of a bona fide intention to use the mark in commerce in connection with the identified goods.

The application includes a disclaimer of WATCH apart from the mark as a whole.

As grounds for opposition, opposer asserts that applicant's mark, when applied to the goods specified in the application, so resembles opposer's previously used and registered mark FLIK FLAK, in the format shown below,



for "watches, watch cases, watch dials, watch straps, and parts therefor"[2] as to be likely to cause confusion, under Section 2(d) of the Trademark Act, 15 U.S.C. 1052(d); and, alternatively, under Section 2(e)(1) of the Trademark Act, 15 U.S.C. 1052(e)(1), that applicant's mark is merely descriptive and has not acquired distinctiveness in connection with its goods, which opposer alleges are watches that flip from one side to another, permitting one watch to have two different faces.

Applicant, in its answer, denied the salient allegations of the claim; admitted that its mark has not acquired distinctiveness; asserted affirmatively that there is no likelihood of confusion; and that the marks have significantly different commercial impressions.

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[2] Registration No. 1,504,800, issued September 20, 1988, in International Class 14. Sections 8 and 15 affidavits accepted and acknowledged, respectively.

Only opposer filed evidence in this case. The record consists of the pleadings; the file of the involved application; third-party registrations of marks containing the word "flip"; printouts of excerpts from various Internet web sites; and dictionary definitions of "flip," made of record by opposer by notices of reliance.[3] Only opposer filed a brief on the case and an oral hearing was not requested.

In its brief, opposer makes statements about itself and the nature of its business and products. Opposer also makes statements in its brief about the nature of the goods set for in the opposed application. However, opposer submitted no evidence during trial that is probative of, or establishes, any of these statements or any of the allegations made in its notice of opposition.

While opposer sufficiently pleaded standing, opposer has not established its standing, i.e., it has not demonstrated a real interest and a reasonable basis for its belief that it will be damaged. *See Richie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023 (Fed. Cir. 1999). Opposer did not even put a status and title copy of its registration in the record.

Even if opposer had established standing, opposer has not established its rights in any mark for any goods. Thus,

[3] Evidence submitted by opposer or applicant in connection with motions

opposer has not established any basis for its claim of likelihood of confusion. Nor has opposer supported its alternative claim that applicant's mark is merely descriptive. The evidence submitted is insufficient to warrant the conclusion that FLIP WATCH is merely descriptive in connection with the identified goods.

Decision: The opposition is dismissed.

in this case does not form part of the record for trial.